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January 16, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE SUBMISSION**

WT Docket No. 03-66; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands

Dear Ms. Dortch:

Yesterday, Msgr. Michael J. Dempsey of the Diocese of Brooklyn, David G. Moore of the Archdiocese of Los Angeles, Edwin N. Lavergne, counsel to the Catholic Television Network ("CTN"), James Hermes of the American Association of Community Colleges, Jon Bernstein and Christy Lewis of Leslie Harris and Associates, counsel to the Education Community ("EC"), Michael R. Kelley of the George Mason University Instructional Foundation (and a member of the Board of the National ITFS Association ("NIA")) and the undersigned, counsel to NIA, met with Joel Taubenblatt, Catherine Seidel, Uzoma Onyeije, John Schauble, Genevieve Ross and Erik Salovaara of the Wireless Telecommunications Bureau, regarding the referenced proceeding.

The participants discussed the question whether eligibility rules for holding Instructional Television Fixed Service ("ITFS") licenses should be modified so as to permit ITFS licenses to be held by for-profit entities. Currently, the rules require ITFS licensees to be accredited schools or other governmental or non-profit entities that provide services to accredited schools.

Representatives of CTN, EC and NIA expressed their view that current eligibility rules for ITFS need to be retained. They urged that open eligibility for ITFS licenses would result over time in the *de facto* reallocation of a substantial part of the ITFS band to a commercial service, that decisions of ITFS licensees to sell their channels in many instances would be coerced, rather than voluntary, that such a reallocation of ITFS spectrum to commercial use would not be in the public interest, and that access to small amounts of capacity as an

educational set-aside on ITFS channels held by for-profit entities would be no substitute for ITFS spectrum controlled by educators.

In connection with the last point, CTN, EC and NIA urged that if educators lose control over ITFS spectrum, the educational and public benefits resulting from existing and contemplated future strategic leasing arrangements would be lost. They pointed out that educators need to retain the right over time to decide for themselves how to best use ITFS spectrum, and share it with commercial operators, to meet their varied and changing educational needs. They urged as well that educators should not be restricted on ITFS channels to an arbitrarily predetermined, set-aside percentage of spectrum, because such capacity would become the educational “cap” rather than the minimum amount of educational capacity. Finally, CTN, EC and NIA explained that the educational set-aside in the Direct Broadcast Satellite service has not promoted real, local educational use, and that such a model would not promote educational use in ITFS either.

Pursuant to Section 1.1206(b)(2) of the Commission’s Rules, we are submitting this summary of the CTN/EC/NIA presentation by filing an electronic copy of this letter in the public record of the proceeding.

Should any questions arise concerning this matter, kindly contact undersigned counsel for the National ITFS Association.

Respectfully submitted,

/s/ Todd D. Gray

Todd D. Gray

cc by email: Joel Taubenblatt
Catherine Seidel
Uzoma Onyeije
John Schauble
Genevieve Ross
Erik Salovaara